

REMARKS

Reconsideration of the above-identified application in view of the present amendment is respectfully requested. By the present amendment, claims 3, 20, 21, 23, 27, and 28 have been canceled, claims 1, 2, 13, 24-26, and 30 have been amended, and new claims 33 and 34 have been added. Claims 1, 2, 5-19, 24-26, and 30-34 are pending in the application.

Claim 24 has been amended to include the limitations of claim 8 so as to be allowable as indicated in the Office Action. Claim 25 has been amended to include the limitations of claim 12 so as to be allowable as indicated in the Office Action. Allowance of claims 24 and 25 is requested.

Claim 1 recites means for moving an occupant's head positioned against the side structure laterally away from the side structure. This is a means-plus-function recitation of structure in accordance with 35 U.S.C. 112, sixth paragraph. This means for moving is not merely functional language; it distinguishes the present invention from the prior art in terms of structure rather than function. The means for moving distinguishes from the prior art in terms of what the apparatus is rather than what the apparatus does.

Since the means-plus-function language of claim 1 is a proper recitation of structure under 35 U.S.C. 112, sixth paragraph, the structure must be taught or suggested in the prior art in order to establish a proper *prima facie* case of obviousness. For reasons set forth below, it is submitted that the prior art references cited in the Office Action, specifically White, Jr. et al., Kato et al., and Hoeft et al.,

individually or in combination, do not teach or suggest this structure or any equivalents to this structure.

Submitted with this amendment is a Declaration under 37 C.F.R. §1.132 and a CD-ROM that includes four AVI video files. The video files illustrate tests in which an inflatable side curtain, with different roll and fold configurations, performs in a head on glass scenario, i.e., a scenario in which an occupant's head is positioned against a side window at the time of curtain deployment.

The only difference between the tests is the roll and/or fold configuration of the inflatable curtain. For each test, the vehicle structure, inflator, fill tube, and inflatable curtain were the same. Also, for each test, the occupant dummy was placed in the same position. Further, for each test, the inflatable curtain module had the same orientation relative to the vehicle, i.e., at 30 degrees relative to vertical, as disclosed in the subject application.

A video file entitled "Curtain Deployment Test - Outboard Roll Only" illustrates the curtain disclosed in the present invention. The curtain is rolled up in an outboard direction and is free of any inboard rolls and any inboard folds. As clearly shown in the video, the curtain moves the occupant's head away from the side window and inflates between the occupant's head and the side structure, as described and claimed in the subject application. The side curtain deploys and a portion engages the occupant's head. A portion of the side curtain forward of the occupant's head deploys forward of and below the portion engaging the occupant's head. Upon

continued inflation and unrolling, the side curtain moves the occupant's head away from the side structure and inflates between the side structure and the occupant's head.

A pair of video files entitled "Curtain Deployment Test 04-07-0171-01 Outboard Roll with Inboard Fold" and "Curtain Deployment Test 04-07-0171-02 Outboard Roll with Inboard Fold" illustrate the curtain rolled up in an outboard direction and having an inboard fold adjacent the upper edge of the curtain, as shown in Hoeft et al. As shown in the videos, in the head on glass scenario, the curtains fail to move the occupant's head away from the side window and fail to inflate between the occupant's head and the side structure. The initial inboard movement of the curtains, caused by the inboard fold adjacent the upper edge of each curtain, results in the curtains deploying inboard of the occupant's head. This initial inboard movement, which is specifically taught in Hoeft et al., clearly affects the ability of the curtains to move the occupant's head away from the side structure and inflate between the occupant's head and the side structure.

A video file entitled "Curtain Deployment Test 04-07-0171-03 Zigzag fold" illustrates the curtain folded in a zigzag pattern, i.e., in a back-and-forth or fan fold manner, as disclosed in Nakajima et al., Kato et al., and White, Jr. et al. As shown in the video, in the head on glass scenario, the curtain fails to move the occupant's head away from the side window and fails to inflate between the occupant's head and the side structure. Because the curtain does not unroll in an outboard direction upon deployment, the curtain is not

urged to deploy outboard of the occupant's head and therefore deploys inboard of the occupant's head.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). The references cited in the Office Action do not teach or suggest means for moving an occupant's head positioned against the side structure laterally away from the side structure as recited in claim 1. The video files described above and submitted herewith illustrate that curtains having the roll/fold configurations of the references cited in the Office Action do not function in the same manner as the curtain described and claimed in the subject application. The Examiner has clearly failed to set forth a case of *prima facie* obviousness, and the rejection of claim 1 under 35 U.S.C. §103(a) should be withdrawn for this reason.

In the Office Action, the Examiner states that the structure disclosed in the references would inherently be capable of moving the occupant's head that is positioned against a vehicle side structure laterally of the side structure. There is no support in the cited references for this assertion.

Arguments that are based on inherent properties cannot stand when there is no supporting teaching in the prior art. *In re Spormann*, 363 F.2d 444, 150 USPQ 449 (C.C.P.A. 1966). Clearly, the Examiner is predicated his rejection on facts that are unknown. There is no teaching or suggestion in the references as to how their respective structures would perform

in a head on glass scenario. As stated previously, Examiner's assertion to the contrary is pure speculation. The Examiner provides absolutely no facts to support his position. In fact, the only evidence presented thus far, i.e., the test videos submitted herewith, contradicts the Examiner's position. Absent some teaching or suggestion to the contrary in the prior art, the rejection of claim 1 must be withdrawn.

For the reasons set forth above, it is respectfully submitted that a *prima facie* case of obviousness has not been set forth because the references cited against claim 1 do not teach or suggest all of the elements recited in claim 1. Therefore, the rejection of claim 1 under 35 U.S.C. §103(a) should be withdrawn and claim 1 should be allowed. Claims 2, 5-19, 31, and 32 depend from claim 1 and should be allowed as depending from an allowable claim and for the specific features recited therein.

Claim 26 recites a method which includes the step of placing the protection device in a stored condition by rolling up the protection device in an outboard direction towards the vehicle side structure. The method also includes the step of moving the occupant's head away from the vehicle side structure by inflating and unrolling the protection device between the vehicle side structure and the occupant's head.

The prior art cited against claim 26 in the Office Action, e.g., White, Jr. et al., Kato et al., and Hoeft et al., does not teach or suggest such as method. As set forth above in regard to claim 1, none of the references teach or suggest moving an occupant's head positioned against the side

structure away from the side structure by inflating and unrolling a protection device between the occupant's head and the side structure. Therefore, the rejections of claim 26 under 35 U.S.C. §103(a) should be withdrawn and claim 26 should be allowed.

As amended, claim 30 recites a protection device a protection device rolled up in an outboard direction towards the vehicle side structure. The protection device is constructed and arranged for engaging an occupant's head positioned against the side structure of the vehicle and unrolling between the occupant's head and the vehicle side structure to move the occupant's head laterally in the vehicle and away from the vehicle side structure. The inflatable vehicle occupant protection device is thus adapted to inflate between the side structure of the vehicle and the occupant's head. The rejection should be withdrawn because the references cited against claim 30, i.e., Nakajima et al., White, Jr. et al., and Kato et al., do not teach or suggest moving an occupant's head positioned against the side structure laterally away from the side structure to inflate between the occupant's head and the side structure.

First, the protection devices disclosed in Nakajima et al., White, Jr. et al., and Kato et al. are all folded in the stored condition. None of the references teach a rolled curtain. Second, none of the references teach or suggest a protection device being constructed and arranged for engaging an occupant's head positioned against the side structure of the vehicle and unrolling between the occupant's head and the

vehicle side structure to move the occupant's head laterally in the vehicle and away from the vehicle side structure. As set forth above, arguments based on inherency cannot stand where there is no teaching or suggestion in the prior art. For these reasons, the rejection of claim 30 under 35 U.S.C. §102(e) should be withdrawn and claim 30 should be allowed.

New claim 33 recites a protection device rolled up in an outboard direction towards the vehicle side structure without any inboard roll or any inboard fold. This is not taught or suggested by any of the references cited in the Office Action. The protection devices disclosed in White, Jr. et al., Kato et al., and Nakajima et al. all have inboard folds and are not rolled. In Hoeft et al., the protection device has an inboard fold (see Fig. 4a). New claim 33 is therefore allowable because the prior art does not teach or suggest an outboard roll free of any inboard roll and any inboard folds.

New claim 34 recites actuatable means for moving an occupant's head positioned against the side structure laterally away from the side structure. The means for moving is deployable into engagement with the occupant's head from a stored position adjacent an intersection of the side structure of the vehicle and the vehicle roof. Again, this is a proper means-plus-function recitation of structure under 35 U.S.C. 112, sixth paragraph. None of the references cited in the Office Action teach or suggest means for moving an occupant's head positioned against the side structure laterally away from the side structure. Accordingly, it is submitted that claim 34 is allowable.

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In view of the foregoing, it is respectfully submitted that the above identified application is in condition for allowance, and allowance of the above-identified application is respectfully requested.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,



Matthew M. Shaheen
Reg. No. 45,367

TAROLLI, SUNDHEIM, COVELL,
& TUMMINO L.L.P.
1111 Leader Building
526 Superior Avenue
Cleveland, Ohio 44114-1400
Phone: (216) 621-2234
Fax: (216) 621-4072
Customer No.: 26294